

CCRB INVESTIGATIVE RECOMMENDATION

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|--|---|---------------------------|---|---|--|
| Investigator: Eliana Behar | Team: Squad #1 | CCRB Case #: 202202407 | <input checked="" type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input type="checkbox"/> O.L. | <input checked="" type="checkbox"/> Injury |
| Incident Date(s) Thursday, 04/07/2022 5:43 PM | Location of Incident: Beach 13th Street and Plainview Avenue | Precinct: 101 | 18 Mo. SOL 10/7/2023 | EO SOL 10/7/2023 | |
| Date/Time CV Reported Thu, 04/07/2022 8:49 PM | CV Reported At: IAB | How CV Reported: Phone | Date/Time Received at CCRB Thu, 04/14/2022 4:18 PM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|--------------------|--------|--------|---------|
| 1. PO Joseph Arbia | 08721 | 942960 | 101 PCT |
| 2. PO Nicole Roark | 18530 | 964243 | 101 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|----------------------------|-----------|--------|----------------|
| 1. PO Christopher Kanhai | 21149 | 958738 | 101 PCT |
| 2. LT Lawrence Granshaw | 00000 | 944609 | 101 PCT |
| 3. PO Michael Montavano | 18346 | 955214 | HARBOR SUM DTL |
| 4. SGT Kyle Riegel | 02459 | 952165 | 101 PCT |
| 5. SGT Christopher Kearney | 02928 | 943429 | 101 PCT |
| 6. PO Sudan Osorio | 20998 | 968049 | 101 PCT |
| 7. PO Scott Edwards | 14288 | 956617 | 101 PCT |
| 8. PO Robert Amendola | 26337 | 966937 | 101 PCT |
| 9. PO Saurabh Shah | 17820 | 951238 | 100 RKWY BCH |
| 10. PO Jordaens Joseph | 15193 | 943419 | 101 PCT |
| 11. PO Christopher Carlino | 08001 | 948746 | 101 PCT |
| 12. PO John Backer | 04598 | 956405 | 101 PCT |
| 13. PO David Perez | 18864 | 940564 | 101 PCT |
| 14. PO Vincent Trovato | 25690 | 972427 | 101 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|--------------------|---|-----------------------------|
| A. PO Joseph Arbia | Force: Police Officer Joseph Arbia struck § 87(2)(b) with a vehicle. | |
| B. PO Joseph Arbia | Force: Police Officer Joseph Arbia used a non-lethal restraining device on § 87(2)(b) | |
| C. PO Nicole Roark | Discourtesy: Police Officer Nicole Roark spoke discourteously to § 87(2)(b) | |
| D. PO Nicole Roark | Abuse: Police Officer Nicole Roark threatened § 87(2)(b) with the use of force. | |

Case Summary

On April 7, 2022, Lieutenant Lawrence Granshaw filed the following complaint with IAB on behalf of § 87(2)(b). The CCRB received this complaint on April 14, 2022.

On April 7, 2022, Police Officer Joseph Arbia and Police Officer Nicole Roark, of the 101st Precinct, received a call for an assault in progress and followed § 87(2)(b) in their vehicle. PO Arbia hit § 87(2)(b) with his vehicle (**Allegation A: Force**—§ 87(2)(g)). PO Arbia followed him in his vehicle and fired his taser out of the front passenger side window (**Allegation B: Force**—§ 87(2)(g)). PO Roark pointed her taser at him and yelled “get down on the fucking floor now or you’re going to get tased” (**Allegation C: Discourtesy**—§ 87(2)(g)) (**Allegation D: Abuse of Authority**—§ 87(2)(g)). § 87(2)(b) was arrested for assault.

Nineteen Body Worn Camera (BWC) videos were obtained from 16 officers (02-20).

Findings and Recommendations

Allegation (A) Force: Police Officer Joseph Arbia struck § 87(2)(b) with a vehicle.

Allegation (B) Force: Police Officer Joseph Arbia used a non-lethal restraining device on § 87(2)(b)

Allegation (C) Discourtesy: Police Officer Nicole Roark spoke discourteously to § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Nicole Roark threatened § 87(2)(b) with the use of force.

On April 7, 2022, § 87(2)(b) was at a bus stop on Beach 9th Street and Seagirt Boulevard with his ex-girlfriend. They got into a verbal dispute which turned physical. § 87(2)(b) noticed that a female bystander witnessed their fight. § 87(2)(b) then walked away from his ex-girlfriend, heading north, and made a left from Beach 9th Street heading west onto Meehan Avenue and then noticed a police vehicle following him. § 87(2)(b) ran west on Meehan Avenue towards Beach 12th Street, where he made a left, heading south. As he ran south on the east side sidewalk towards Plainview Avenue, the police vehicle, which he estimated was going 20-25mph, drove onto the sidewalk and hit § 87(2)(b) on the right side of his body. § 87(2)(b) immediately fell backwards onto the ground and hit the back of his head against the concrete. § 87(2)(b) felt dizzy and was seeing double, however he got up from the ground and continued running. PO Roark exited the vehicle and chased § 87(2)(b). She shot her taser at him but missed. After she deployed the taser, § 87(2)(b) stopped running and fell to the ground because he was dizzy and nauseous. PO Arbia then exited the vehicle and approached § 87(2)(b) while holding his taser. Both officers placed § 87(2)(b) in handcuffs. Later, § 87(2)(b) threw up from dizziness and was taken to § 87(2)(b) where he was diagnosed with whiplash. Ever since he was hit by the vehicle § 87(2)(b) has been experiencing pain in his lower back and left ankle (Board Review 01).

In PO Arbia’s BWC, he is driving and at 00:57 he rolls down his driver’s side window and there is a black female walking and he asks her if everything is okay. At 01:08 PO Arbia says, “why is she bleeding from the lip” and then immediately turns his vehicle around and begins driving in the opposite direction. At 01:15 he says “he’s running” while PO Roark radios over that they have a male black in a black jacket running on Meehan Avenue away from Beach 9th Street. At this point the sound of the vehicle’s engine revs, and PO Arbia drives faster which is marked by him quickly passing surrounding homes. At 01:34 PO Roark says over the radio “turning left on Beach 12th” as PO Arbia makes a left turn and yells “stop running” three times. At 01:38 PO Arbia is driving alongside § 87(2)(b) a black male wearing a black jacket and a purple doo rag, and he is running on the left-hand sidewalk. As the left front bumper of the vehicle is parallel to § 87(2)(b) PO Arbia turns his steering wheel to the left, with his left bumper pointing towards § 87(2)(b) who is still running. As his vehicle gets closer to § 87(2)(b) there is a

banging noise and PO Arbia turns his steering wheel to the right, away from the sidewalk and at 01:41 he stops the vehicle. Playing frame by frame from 01:38 it appears that at 01:39 § 87(2)(b) right arm goes up in the air and then on top of the hood. Shortly thereafter he is upright next to PO Arbia's door and then goes out of view. PO Arbia's arm blocks part of the view of § 87(2)(b) movement. As § 87(2)(b) goes out of view, PO Arbia's vehicle is still moving forward. At 01:49 PO Roark says, "where did he go" and PO Arbia points ahead and says, "right there." PO Arbia accelerates his vehicle again and drives in front of PO Roark. At 02:00 he slows down and is holding his taser in his right hand. At 02:04 his right arm cannot be seen, however there is a sound of a taser being discharged. At 02:17 PO Arbia exits his vehicle and has his taser in his left hand. He runs to the sidewalk and § 87(2)(b) is face down on the sidewalk and PO Roark is behind him pointing her taser at him. PO Roark then holsters her taser and places § 87(2)(b) in handcuffs (Board Review 02).

PO Roark's BWC (Board Review 03), captures § 87(2)(b) running from a different angle. Playing frame by frame from 01:38, § 87(2)(b) leaps in the air, is then standing in front of the hood of PO Arbia's vehicle, and then is no longer in view. At 01:40 PO Roark runs out of the vehicle. Immediately after she exits the vehicle PO Arbia begins to drive away from the sidewalk, and PO Roark says, "where did he go?" and then turns around. At 01:49 § 87(2)(b) is on the right-hand sidewalk and PO Roark runs after him. At 02:03 she yells, "stop running" and has her taser in her right hand pointed at him and yells, "get down." At 02:07 she yells, "get down on the floor right fucking now or you're gonna get tased." § 87(2)(b) stops running, has his arms out, and gets down on his knees. At 02:14 PO Roark tells him to get on his stomach and he complies. PO Arbia approaches and PO Roark places § 87(2)(b) in handcuffs. As § 87(2)(b) is brought back to the stationhouse, he complains of being in pain and requests medical attention. At 13:54 § 87(2)(b) is in the rear of the police vehicle and tells PO Arbia that he hit him with his car and PO Arbia responds saying "you mean you ran into a car." At 15:25 § 87(2)(b) vomits outside of the stationhouse and then is placed inside of the waiting ambulance.

PO Arbia stated that as he approached the incident location two juveniles waved him down and pointed to § 87(2)(b) and a black female and told the officers that § 87(2)(b) hit the female. PO Arbia drove towards the female, who was no longer with § 87(2)(b) and noticed that she was bleeding from her nose. At this point PO Arbia looked in his rearview mirror and saw that § 87(2)(b) was running away in the direction of the two juveniles. PO Arbia turned his vehicle around and followed § 87(2)(b) who was running down a residential street on the left-hand sidewalk. PO Arbia pulled up next to § 87(2)(b) and told him multiple times to stop running but he did not listen. PO Arbia drove ahead of § 87(2)(b) and turned his vehicle at a 45-degree angle onto the sidewalk and stopped his vehicle thereby cutting § 87(2)(b) off and blocking his path to prevent him from running away. PO Arbia did not drive into § 87(2)(b) and stated that § 87(2)(b) was behind his vehicle when he made the stop. Instead of stopping when PO Arbia drove onto the sidewalk, § 87(2)(b) tried to jump over the hood of PO Arbia's vehicle. At this point the flank of § 87(2)(b) body landed on the hood of the vehicle, and he fell to the ground immediately after. He could not see how § 87(2)(b) landed on the ground as PO Arbia was in the driver's seat and could not see beyond the front bumper of his vehicle. He therefore did not know if § 87(2)(b) injured himself in any way when he fell. Once § 87(2)(b) landed on the hood of the car, PO Roark got out of the vehicle, however § 87(2)(b) was no longer on the ground but running on the right-hand sidewalk. He did not appear injured in any way and was running quickly. PO Roark ran after § 87(2)(b) on foot while PO Arbia chased after him in his vehicle. PO Arbia caught up to him with his vehicle and turned on his siren to get § 87(2)(b) attention. He then took out his taser while he was driving and pointed his taser at § 87(2)(b) and fired his taser out of the front passenger's side of the vehicle with the intention of hitting § 87(2)(b) in the center mass of his back so that he would stop, however the taser missed. PO Arbia stated that he used his taser since § 87(2)(b) posed a threat to the public since he had just assaulted someone and was running down a sidewalk fleeing from the police during school dismissal time and was initially running towards the eyewitnesses. After PO Arbia fired the taser § 87(2)(b) stopped running and PO Roark caught up to § 87(2)(b) while pointing her taser

towards him and yelling stop. § 87(2)(b) complied and surrendered to the police and got to the ground on his own, and PO Roark handcuffed him (Board Review 22).

PO Roark's statement was consistent with PO Arbia's in that she stated that PO Arbia drove onto the sidewalk to block § 87(2)(b) path, and as § 87(2)(b) approached the vehicle he tried to jump over the hood of the vehicle, however he ended up hitting the hood of the vehicle with his body. PO Roark was not sure if § 87(2)(b) fell to the ground. She acknowledged chasing and pointing her taser as § 87(2)(b) and yelling "if you don't stop I'm going to tase you" and "get down on the floor right fucking now." She took out her taser because § 87(2)(b) was a fleeing suspect and was resisting arrest by running from the police. § 87(2)(b) did not appear injured in any way when running. She stated that after she yelled for him to stop, § 87(2)(b) complied, so she did not tase him. She stated that she used the word "fuck" when telling § 87(2)(b) to get on the floor as she believed that using harsh language would help gain § 87(2)(b) compliance and possibly without resorting to tasing him. When § 87(2)(b) stopped running, PO Roark holstered her taser and placed him in handcuffs (Board Review 23).

A TRI (Threat, Resistance or Injury) report was prepared for this incident and consistent with BWC and officer statements. Additionally, it noted that upon BWC review it appeared that the front driver side quarter panel of the police vehicle made contact with § 87(2)(b) and he appeared to stumble but was still able to continue running (Board Review 30).

§ 87(2)(b) medical records indicate that § 87(2)(b) stated that he was hit by a police vehicle and lost consciousness and was experiencing hip pain from the incident. The police stated that § 87(2)(b) was running from them, was tasered, and fell into a stationary police vehicle. His discharge information states that he was seen in the ER for hip pain after a fall and received a CT scan of his head, neck, abdomen, and pelvis and they were unable to locate any fractures or acute pathology. He was diagnosed with whiplash (Board Review 29).

Patrol Guide Procedure 221-15 discusses the tactics prohibited when attempting to stop a vehicle. These tactics include ramming, placing a moving Department vehicle in a position to be struck by the pursued vehicle, and driving alongside the pursued vehicle (Board Review 28).

According to Patrol Guide Procedure 221-01, force may be used when it is reasonable to ensure the safety of a member of service or a third person, to place a person into custody or prevent escape from custody. Any application or use of force must be reasonable under the circumstances. In determining whether the use of force is reasonable, officers should consider the nature and severity of the crime, actions taken by the subject, duration of the action, immediacy of the perceived threat, whether the subject is actively resisting custody, whether the subject is attempting to evade arrest by flight, number of subjects in comparison to the number of MOS, size, age, and condition of the subject in comparison to the MOS, subject's violent history if known, presence of hostile crowd or agitators, and if the subject is under the influence of any substances (Board Review 24).

According to Patrol Guide Procedure 221-08, a conducted electrical weapon (CEW) should only be used against a person who is actively resisting, exhibiting active aggression, or to prevent an individual from physically injuring themselves or others. Active resistance "includes physically evasive movement to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. Active aggression is a "threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault which reasonably indicates that an assault or injury to any person is imminent." When feasible, the officer should issue a verbal warning prior to discharging the CEW. Fleeing should not be the sole justification for using a CEW against a subject. Members should consider the severity of the offense, the subject's threat level to others, and the risk of serious injury to the subject

before deciding to use a CEW on a fleeing subject (Board Review 25).

DCT Case No. 2018-18951 states that there are certain situations where profane remarks made during a stressful or chaotic situation would not constitute misconduct (Board Review 34). DCT Case No. 2015-15012 states that discourteous statements are allowed during dynamic situations, however they are not allowed when their sole purpose is to belittle the civilian (Board Review 27).

§ 87(2)(b) admittedly ran from police after engaging in a physical altercation with his girlfriend. The BWC showed § 87(2)(b) refuse multiple verbal instructions stop running before PO Arbia drove alongside § 87(2)(b) and turned in front of him. Immediately, § 87(2)(b) went up in the air. Based on the BWC footage and the officers' testimony that PO Arbia drove onto the sidewalk to block § 87(2)(b) path the investigation determined by a preponderance of the evidence that PO Arbia's vehicle struck § 87(2)(b). According to PG 221-15 placing a moving department vehicle in a position to be struck by the pursued vehicle is a prohibited police tactic, and although § 87(2)(b) was on foot, and not driving a vehicle, the same principle can be applied as § 87(2)(b) was in motion and striking someone with a vehicle could result in serious injury. Although it cannot be determined whether PO Arbia intended to strike § 87(2)(b) with his vehicle, he purposefully maneuvered his vehicle onto the sidewalk to stop § 87(2)(b) from running thereby making it highly likely that the vehicle would strike § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) who had just assaulted someone and therefore posed a threat to others, fled from PO Arbia and PO Roark and refused multiple verbal commands to stop running. Even when the vehicle made contact with § 87(2)(b) he continued to cross the street and run from police, and only after this did PO Arbia deploy his taser at § 87(2)(b). At the point that he deployed his taser, PO Roark was lagging behind PO Arbia. The taser did not hit § 87(2)(b) and shortly after PO Arbia fired his taser, PO Roark, who was on foot chasing § 87(2)(b) caught up and pointed her taser at § 87(2)(b) and threatened to tase him if he did not stop. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Since § 87(2)(b) had assaulted someone and was running from the police to evade arrest, this was a highly stressful, chaotic, and dynamic situation for the officers. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 31).
- Nicole Roark has been a member of service for five years and has been a subject in three CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- Joseph Arbia has been a member of service for 16 years and has been a subject in 13 CCRB complaints and 27 allegations, none of which were substantiated. § 87(2)(g)

CCRB Case # 202202407

§ 87(2)(g)

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York alleging that he sustained injuries to his head, body, limbs, and nervous system and seeking five million dollars as redress (Board Review 32). § 87(2)(a)

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad: _____ 1 _____

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|---------------|---------------------|--------------------|-----------------|
| Investigator: | <u>Eliana Behar</u> | <u>Inv. Behar</u> | <u>04/24/23</u> |
| | Signature | Print Title & Name | Date |

| | | | |
|---------------|-------------------------|--------------------|-------------------|
| Squad Leader: | <u>Mgr. Joy Almeyda</u> | <u></u> | <u>05.19.2023</u> |
| | Signature | Print Title & Name | Date |

| | | | |
|-----------|-----------|--------------------|---------|
| Reviewer: | <u></u> | <u></u> | <u></u> |
| | Signature | Print Title & Name | Date |